DENNIS J. HERRERA, State Bar #139669
City Attorney
JOANNE HOEPER, State Bar #114961
Chief Trial Deputy
KIMBERLY A. BLISS, State Bar #207857
Deputy City Attorneys
Fox Plaza
1390 Market Street, Sixth Floor
San Francisco, California 94102-5408
Telephone: (415) 554-3861
Facsimile: (415) 554-3837
E-Mail: kimberly.bliss@sfgov.org

Attorneys for Defendants
CITY AND COUNTY OF SAN FRANCISCO AND
GEORGE GASCÓN

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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| TIMOTHY HOYT,<br><br>Plaintiff,<br><br>vs.<br><br>CITY AND COUNTY OF SAN FRANCISCO, GEORGE GASCÓN, AND DOES 1-20,<br><br>Defendants. | Case No. C 10-1778 RS<br><br>**DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT**<br><br>**JURY TRIAL DEMAND**<br><br>Date Action Filed: April 26, 2010<br>Trial Date: None Set |

Defendants City and County of San Francisco and Chief George Gascon, by and through their attorneys of record, hereby answer the complaint filed on or about April 26, 2010 ("complaint"), as follows:

**JURISDICTION**

1. Defendants contend that the allegations of the paragraph state a conclusion of law which require no response from these Defendants.

**VENUE AND INTRADISTRICT ASSIGNMENT**

2. Defendants contend that the allegations of the paragraph state a conclusion of law which require no response from these Defendants.

## PARTIES

3. With respect to the allegations contained in this paragraph, Defendants lack sufficient information to either affirm or deny these allegations and, on that basis, they are denied.

4. Defendant City and County of San Francisco admits that it is a public entity/municipal corporation organized under the laws of the State of California.

5. Defendants admit that George Gascon is the Chief of Police for the City and County of San Francisco. As to the remaining allegations of this paragraph, Defendants contend that the allegations of the paragraph state a conclusion of law which require no response from these Defendants.

6. With respect to the allegations contained in this paragraph, Defendants lack sufficient information to either affirm or deny these allegations and, on that basis, they are denied.

## STATEMENT OF FACTS

7. With respect to the allegations contained in this paragraph, Defendants lack sufficient information to either affirm or deny these allegations and, on that basis, they are denied.

8. With respect to the allegations contained in this paragraph, Defendants lack sufficient information to either affirm or deny these allegations and, on that basis, they are denied.

9. With respect to the allegations contained in this paragraph, Defendants lack sufficient information to either affirm or deny these allegations and, on that basis, they are denied.

10. With respect to the allegations contained in this paragraph, Defendants lack sufficient information to either affirm or deny these allegations and, on that basis, they are denied.

11. With respect to the allegations contained in this paragraph, Defendants admit that on January 3, 2010, several SFPD Officers responded to a call for assistance at the Century Theatres located at 845 Market Street. As to the remaining allegations of this paragraph, Defendants either: 1) lack personal knowledge on which to admit or deny such allegations; or 2) specifically deny such allegations.

12. As to the allegations of this paragraph, Defendants either: 1) lack personal knowledge on which to admit or deny such allegations; or 2) specifically deny such allegations.

13. Defendants deny the allegations of this paragraph.

14. Defendants admit that they did not arrest a Mr. Timothy Hoyt on January 3, 2010. As to the remaining allegations of this paragraph, Defendants either: 1) lack personal knowledge on which to admit or deny such allegations; or 2) specifically deny such allegations.

15. With respect to the allegations contained in this paragraph, Defendants lack sufficient information to either affirm or deny these allegations and, on that basis, they are denied.

16. With respect to the allegations contained in this paragraph, Defendants lack sufficient information to either affirm or deny these allegations and, on that basis, they are denied.

17. As to the allegations of this paragraph, Defendants either: 1) lack personal knowledge on which to admit or deny such allegations; or 2) specifically deny such allegations.

18. Defendants deny the allegations of this paragraph.

19. Defendants deny the allegations of this paragraph.

20. Defendants deny the allegations of this paragraph.

21. Defendants deny the allegations of this paragraph.

22. Defendants deny the allegations of this paragraph.

23. Defendants deny the allegations of this paragraph.

24. Defendants deny the allegations of this paragraph.

25. Defendants deny the allegations of this paragraph.

26. Defendants deny the allegations of this paragraph.

27. Defendants deny the allegations of this paragraph.

28. Defendants deny the allegations of this paragraph.

29. With respect to the allegations contained in this paragraph, Defendants lack sufficient information to either affirm or deny these allegations and, on that basis, they are denied.

**COMPLIANCE WITH CALIFORNIA GOVERNMENT TORT CLAIMS ACT**

30. Defendants admit the allegations of this paragraph.

## CLAIMS FOR RELIEF

## FIRST CLAIM FOR RELIEF

## (VIOLATION OF 42 USC §1983 AGAINST DEFENDANTS CITY OF SAN FRANCISCO AND GASCON)

31. With respect to the allegations of the paragraph, Defendants refers to and incorporate by reference their responses to all paragraphs above as though fully set forth herein.

32. Defendants deny the allegations of this paragraph.

33. Defendants deny the allegations of this paragraph.

34. Defendants contend that the allegations of the paragraph state a conclusion of law which require no response from these Defendants.

35. With respect to the allegations contained in this paragraph, Defendants either: 1) lack sufficient information to either affirm or deny these allegations; or 2) specifically deny such allegations.

36. With respect to the allegations contained in this paragraph, Defendants either: 1) lack sufficient information to either affirm or deny these allegations; or 2) specifically deny such allegations.

## SECOND CLAIM FOR RELIEF

## (NEGLIGENCE AGAINST DEFENDANTS CITY AND COUNTY OF SAN FRANCISCO AND GASCON)

37. With respect to the allegations of the paragraph, Defendants refer to and incorporate by reference their responses to all paragraphs above as though fully set forth herein.

38. Defendants contend that the allegations of the paragraph state a conclusion of law which require no response from these Defendants.

39. Defendants deny the allegations of this paragraph.

40. Defendants contend that the allegations of the paragraph state a conclusion of law which require no response from these Defendants. To the extent a response is required, Defendants deny such allegations.

41. With respect to the allegations contained in this paragraph, Defendants either: 1) lack sufficient information to either affirm or deny these allegations; or 2) specifically deny such allegations.

42. With respect to the allegations contained in this paragraph, Defendants either: 1) lack sufficient information to either affirm or deny these allegations; or 2) specifically deny such allegations.

**THIRD CLAIM FOR RELIEF**
**(BATTERY AGAINST DEFENDANTS CITY OF SAN FRANCISCO AND GASCON)**

43. With respect to the allegations of the paragraph, Defendants refer to and incorporate by reference their responses to all paragraphs above as though fully set forth herein.

44. Defendants deny the allegations of this paragraph.

45. With respect to the allegations contained in this paragraph, Defendants either: 1) lack sufficient information to either affirm or deny these allegations; or 2) specifically deny such allegations.

46. Defendants contend that the allegations of the paragraph state a conclusion of law which require no response from these Defendants. To the extent a response is required, Defendants deny such allegations.

47. With respect to the allegations contained in this paragraph, Defendants either: 1) lack sufficient information to either affirm or deny these allegations; or 2) specifically deny such allegations.

48. Defendants contend that the allegations of the paragraph state a conclusion of law which require no response from these Defendants. To the extent a response is required, Defendants deny such allegations.

**FOURTH CLAIM FOR RELIEF**
**(FALSE IMPRISONMENT AGAINST DEFENDANTS CITY OF SAN FRANCISCO AND GASCON)**

49. With respect to the allegations of the paragraph, Defendants refer to and incorporate by reference their responses to all paragraphs above as though fully set forth herein.

50. Defendants deny the allegations of this paragraph.

51. With respect to the allegations contained in this paragraph, Defendants either: 1) lack sufficient information to either affirm or deny these allegations; or 2) specifically deny such allegations.

52. Defendants contend that the allegations of the paragraph state a conclusion of law which require no response from these Defendants. To the extent a response is required, Defendants deny such allegations.

53. With respect to the allegations contained in this paragraph, Defendants either: 1) lack sufficient information to either affirm or deny these allegations; or 2) specifically deny such allegations.

54. Defendants contend that the allegations of the paragraph state a conclusion of law which require no response from these Defendants. To the extent a response is required, Defendants deny such allegations.

Defendants submit that the remaining unnumbered allegations of the complaint are Plaintiff's prayer for relief which require no response from these answering Defendants. To the extent the allegations require a response, Defendants deny such allegations.

**SEPARATE AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Claim)**

Plaintiff fails to state facts sufficient to constitute a cause of action against these Defendants.

**SECOND AFFIRMATIVE DEFENSE**

**(Comparative Negligence)**

Defendants allege by way of a plea of comparative negligence that Plaintiff was negligent in and about the matters and activities alleged in the complaint; that said negligence contributed to and was a proximate cause of Plaintiff's alleged injuries and damages, if any, or was the sole cause thereof; and that if Plaintiff is entitled to recover damages against these Defendants, then Defendants pray that the recovery be diminished or extinguished by reason of the negligence of Plaintiff in proportion to the degree of fault attributable to Plaintiff.

**THIRD AFFIRMATIVE DEFENSE**
**(Contribution)**

Defendants allege that the fault of persons other than these Defendants contributed to and proximately caused the occurrence; and under the principles formulated in the case of *American Motorcycle Association v. Superior Court*, 20 Cal. 3d 578 (1978), and under the provisions of California Civil Code §§1431, 1431.1, 1431.2 and 1431.3, this Defendants prays that the percentage of such contribution be established by special verdict or other procedure, and that these Defendants' ultimate liability be reduced to the extent of such contribution.

**FOURTH AFFIRMATIVE DEFENSE**
**(Statute of Limitations)**

Defendants allege that the complaint and each and every cause of action therein is barred by the statutes of limitations, including without limitation, Government Code section 945.6 and California Code of Civil Procedure 335 *et seq.*

**FIFTH AFFIRMATIVE DEFENSE**
**(Failure to Mitigate Damages)**

Defendants allege that the complaint and each and every cause of action therein is barred because Plaintiff failed to use reasonable diligence to mitigate his alleged damages, and said failure bars or reduces the recovery, if any, from Defendants.

**SIXTH AFFIRMATIVE DEFENSE**
**(Negligence of Third Parties - Equitable and Statutory Indemnity for Defendants)**

Defendants state that Plaintiff's injuries were caused by the negligence or other act or omission of third parties, and Defendants are entitled to equitable and statutory indemnity from such third parties.

**SEVENTH AFFIRMATIVE DEFENSE**
**(Immunity - Barred by Tort Claims Act and Penal Code)**

Plaintiff's state law claims are barred by the provisions and immunities of the California Tort Claims Act, without limitation: Government Code Sections 815; 815.2; 815.3; 815.4; 815.6; 816; 818; 818.2; 818.4; 818.5; 818.6; 818.7; 818.8; 818.9; 820; 820.2; 820.21; 820.25; 820.4; 820.6; 820.8; 820.9; 821; 821.2; 821.4; 821.5; 821.6; 821.8; 822; 822.2; 823; 825; 825.4; 825.6; 827; 830; 830.1;

830.2; 830.4; 830.5; 830.6; 830.8; 830.9; 831; 831.2; 831.21; 831.25; 831.3; 831.4; 831.5; 831.6; 831.7; 831.8; 835; 835.2; 835.4; 840; 840.2; 840.4; 840.6; 844; 844.6; 845; 845.2; 845.4; 845.6; 845.8; 846; 850; 850.2; 850.4; 850.6; 850.8; 854; 854.2; 854.3; 854.4; 854.5; 854.8; 855; 855.2; 855.4; 855.6; 855.8; 856; 856.2; 856.4; 856.6; 860; 860.2; 860.4; 862; 865; 866; 867; 895; 895.2; 895.4; 895.6; 895.8; and California Penal Code Sections 148, 409, 834a, 834, 835, 835a, 836, and 849. Under California law, these Defendants are liable only pursuant to statute.

**EIGHTH AFFIRMATIVE DEFENSE**
**(Equitable Defenses)**

By reason of Plaintiff’s own acts and omissions, Plaintiff is barred by the equitable doctrines of estoppel, laches, unclean hands, and waiver from seeking any recovery or injunctive relief from Defendants by reason of the allegations set forth in Plaintiff's Complaint.

**NINTH AFFIRMATIVE DEFENSE**
**(No Malice or Bad Faith)**

Defendants did not act with malice or bad faith, in reckless disregard, or in an oppressive or willful manner, nor did they intend to harm or deprive Plaintiff or any rights.

**TENTH AFFIRMATIVE DEFENSE**
**(Careless, Reckless, Wanton and Negligent Acts)**

At all times mentioned in the complaint, the Plaintiff acted in a careless, reckless, wanton and negligent manner in and about the matters set forth in the complaint; such careless, reckless, wanton and negligent conduct proximately contributed to the injuries and damages, if any, sustained or claimed by Plaintiff; that as a consequence, Plaintiff's claim is barred.

**ELEVENTH AFFIRMATIVE DEFENSE**
**(Violation of Penal Code)**

Defendants allege that Plaintiff violated certain provisions of the California Penal Code, and that Plaintiff voluntarily assumed all risks, responsibility and liability for the injuries which were the natural and probable result of violating the California Penal Code.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Qualified Immunity)**

Defendants allege that the actions complained of are protected by the doctrine of qualified immunity as set forth in *Anderson v. Creighton*, 107 S.Ct. 3034 (1984), and related cases.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Self-Defense and Defense of Others)**

Defendants alleges that if in fact any force was used against Plaintiff, such force was the lawful exercise of the right of self-defense and defense of the public, and any recovery pursuant to said use of force is barred.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Privileged Use of Force)**

Defendants allege that if in fact any force was used to control Plaintiff, such force was authorized and privileged pursuant to sections 835 and 835a of the California Penal Code and as a proximate result thereof Plaintiff is barred from any recovery herein for any alleged injury or damage.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Probable Cause)**

Defendants had reasonable and/or probable cause to detain, restrain and/or arrest Plaintiff.

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Failure To State A Claim Under *Monell*)**

Defendants allege that the Complaint fails to state a federal civil rights claim against Defendants under the doctrine announced in *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Reasonable Force)**

No more force was used on Plaintiff's person than was necessary to effect detention, overcome any resistance thereto, prevent escape therefrom, prevent injury to the officer and/or to facilitate and safeguard a valid police investigation.

**EIGHTEENTH AFFIRMATIVE DEFENSE**
**(Discretionary Immunity)**

Defendants are not liable under the provisions of California Government Code sections 815, 815.2 and/or 820.2, and other applicable provisions of law and each of them, in that any damages to plaintiff as alleged in the complaint would have resulted from acts or omissions committed in the exercise of discretion vested in public employees.

**NINETEENTH AFFIRMATIVE DEFENSE**
**(Variance Between Tort Claim and Complaint)**

Plaintiff's purported state causes of action are limited to those factual allegations and theories of recovery set forth in Plaintiff's written government tort claim, if any, and that to the extent that the complaint attempts to enlarge or expand upon those allegations and theories, the complaint fails to state a cause of action and is barred pursuant to Government Code §§905, 910, 910.2, 910.4, 910.6, 911.2, 945.3, 945.5, 945.6, 946.4, 950.2 and related provisions.

**ADDITIONAL AFFIRMATIVE DEFENSES**

Defendants presently have insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, defenses available. Defendants reserve the right to assert additional defenses in the event that discovery indicates that they would be appropriate.

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WHEREFORE, defendants prays for judgment as follows:

1. That plaintiff take nothing from defendants;

2. That the complaint be dismissed with prejudice;

3. That defendants recover costs of suit herein, including attorneys' fees; and

4. For such other relief as is just and proper.

Dated: June 21, 2010

DENNIS J. HERRERA
City Attorney
JOANNE HOEPER
Chief Trial Attorney
KIMBERLY A. BLISS
Deputy City Attorneys

By: /s/ Kimberly A. Bliss
KIMBERLY A. BLISS

Attorneys for Defendants CITY AND COUNTY OF SAN FRANCISCO AND GEORGE GASCÓN

**JURY TRIAL DEMAND**

Defendants demand a trial by jury on all causes of action and all defenses.

Dated: June 21, 2010

DENNIS J. HERRERA
City Attorney
JOANNE HOEPER
Chief Trial Attorney
KIMBERLY A. BLISS
Deputy City Attorneys

By: /s/ Kimberly A. Bliss
KIMBERLY A. BLISS

Attorneys for Defendants CITY AND COUNTY OF SAN FRANCISCO AND GEORGE GASCÓN